

RESPONSE

Status of the Claims

Prior to entry of this Amendment, claims 1-20 are pending in the application; however, claims 8-15 have been withdrawn for consideration as being drawn to unelected species. Claims 1-4, 6, 7, and 16-19 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent 2,032,631 to Pushee (“Pushee”). Claims 1-5 and 16-20 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent 3,004,673 to Emery (“Emery”). Also, the specification and claim 1 are objected to.

Applicant hereby amends claims 1 and 16 and adds new claims 21-23. In accord with 37 C.F.R. § 1.121, attached is a clean copy of all pending claims and a copy of a marked-up version of the amended claims.

In view of the above amendments and following remarks, reconsideration and withdrawal of all grounds of objection and rejection are respectfully requested.

Amendments to the Specification

Applicant hereby amends the specification to address the informalities therein in response to the Examiner’s objection. In particular, Applicant amends the “Related Applications” section to indicate the filing date of the priority document. Applicant also makes corrections to reference numerals to bring the specification in conformity with the drawings. No new matter has been introduced by these amendments.

Amendments to the Claims

Applicant amends claim 1 in response to the Examiner’s objection and request to insert “thereby” before “forming.” Further, Applicant amends claims 1 and 16, and adds new claims 21-23 to more particularly point out and distinctly claim the subject matter of the invention. No new matter has been introduced by these amendments. Support of these amendments can be found throughout the specification, for example, at page 8, lines 19-25; page 10, lines 18-26; page 11, lines 12-27; and Figures 2, 4, and 5.

Rejections Under 35 U.S.C. § 102(b)

Pushee

Claims 1-4, 6, 7, and 16-19 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Pushee. Applicant respectfully traverses this rejection and submits that Pushee does not anticipate Applicant's claims because Pushee does not describe each element of independent claims 1 and 16, as amended, or claims 2-4, 6, 7, and 17-19 that depend therefrom.

Briefly, Pushee discloses a brush display rack having two walls, a front wall and a rear wall. See Pushee, col. 1, lines 1-2, and Figures 1-2. The front wall includes spaced-apart panels for receiving brush handles therebetween. See id. at lines 34-40. The rear wall serves as a support for brush heads. See id. at lines 28-29 and 43-44 and Figures 1-2. Brushes are displayed in stacks in spaces between panels. See id. at lines 37-39 and Figures 1-2.

In order for a claim to be anticipated under 35 U.S.C. §102(b), each and every limitation thereof must be found in a single reference. Applicant respectfully submits that Pushee fails to meet this exacting standard with respect to independent claims 1 and 16, as amended, or claims 2-4, 6, 7, and 17-19 that depend therefrom. Specifically, Pushee does not teach or suggest at least a first rail and a second rail "forming an opening therebetween for receiving an elongate member in a generally vertical orientation," as well as "generally horizontally disposed means for supporting a lower end of the elongate member when received between the rails," as required by Applicant's independent claims 1 and 16, as amended, and by claims 2-4, 6, 7, and 17-19 dependent therefrom.

A. *Pushee does not teach or suggest the rails "forming an opening therebetween for receiving an elongate member in a generally vertical orientation."*

Independent claims 1 and 16, as amended, require, *inter alia*, "forming an opening therebetween for receiving an elongate member in a generally vertical orientation." In contrast to Applicant's claims, Pushee does not teach or suggest that his brushes are received between the walls 11 and 15 in a generally vertical orientation.

First, an opening formed between the walls in Pushee's rack does not receive objects therein in a generally vertical orientation. Pushee teaches that brushes are supported in the space 15a-15d between panels of the front wall 15 and by the top edge of the rear wall 11. See,

Pushee, col. 1, lines 32-44 and Figure 1. That is, Pushee's brushes lie on top of the contours of the walls 15 and 11, not between the walls.

Moreover, Applicant submits that Pushee teaches one of ordinary skill in the art away from receiving an elongate member in a generally vertical orientation in an opening formed between a first rail and a second rail, as required by Applicant's claims. Pushee describes a rack that is designed specifically for displaying brushes or similar implements in the slots of the front wall supported by the top of the rear wall. Specifically, Pushee describes that the implements are secured on the rack by engaging an area where the implement's handle meets the head in the slot, so that the head (or the widening of the handle proximate to the head) acts as a stop preventing the implement from sliding out. See, Pushee, col. 1, lines 39-44. Pushee's rack does not secure an elongate object by its handle in a generally vertical orientation.

Thus, at least because Pushee does not teach or suggest "forming an opening therebetween for receiving an elongate member in a generally vertical orientation," Applicant submits that independent claims 1 and 16, as amended, and claims 2-4, 6, 7, and 17-19 that depend therefrom, are novel and non-obvious over Pushee.

B. Pushee does not teach or suggest "generally horizontally disposed means for supporting a lower end of the elongate member when received between the rails."

Also, independent claims 1 and 16, as amended, also require, *inter alia*, "generally horizontally disposed means for supporting a lower end of the elongate member when received between the rails." In contrast, as described above, Pushee teaches that brushes are supported in the space 15a-15d between panels of the front wall 15 and by the top edge of the rear wall 11. Pushee, however, does not teach or suggest any structure supporting the lower end of the brushes between the walls.

Thus, at least because Pushee does not teach or suggest "generally horizontally disposed means for supporting a lower end of the elongate member when received between the rails," Applicant submits that independent claims 1 and 16, as amended, and claims 2-4, 6, 7, and 17-19 that depend therefrom, are novel and non-obvious over Pushee.

Accordingly, for the reasons stated above, Applicant respectfully submits that Pushee fails to be a proper anticipatory reference and thus independent claims 1 and 16, as amended, are patentable. Because all of claims 2-4, 6, 7, and 17-19 depend either from claim 1 or claim 16 and include all of the limitations thereof, Applicants respectfully submit that these claims are patentable, as well. Reconsideration and withdrawal of the rejection of claims 1-4, 6, 7, and 16-19 as being anticipated by Pushee under 35 U.S.C. § 102(b) are respectfully requested.

Emery

Claims 1-5, and 16-20 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Emery. Applicant respectfully traverses this rejection and submits that Emery does not anticipate Applicant's claims because Emery does not describe each element of independent claims 1 and 16, as amended, or claims 2-5, and 17-20 that depend therefrom.

Briefly, Emery discloses a display stand for fishing rods, the display stand including a base 2, an upright supporting member 3 with an upper supporting panel 5 mounted thereon, and a pair of base panels 7, 8 attached to the base 3 and sloping downwardly at a steep angle. See Emery, col. 2, lines 11-15, 25-33 and Figure 1. The base panels 7, 8 have retaining bars 30, 31 mounted thereon in outwardly spaced parallel relation thereto. See Emery, col. 3, lines 17-19. The retaining bar includes a plurality of rollers rotatably mounted thereon. See id. at lines 19-22. Each fishing rod is stored in a generally upright position secured between the upper supporting panel and a roller of the retaining bar with the butt end of the fishing rod resting on the outer face of the base panel. See, id. at lines 47-55.

In order for a claim to be anticipated under 35 U.S.C. §102(b), each and every limitation must be found in a single reference. Applicants respectfully submit that Emery fails to meet this exacting standard with respect to claims 1 and 16, as amended.

In particular, independent claims 1 and 16, as amended, require, *inter alia*, "generally horizontally disposed means for supporting a lower end of the elongate member when received between the rails." Thus, as set forth in the claims and the description, the surface of Applicant's means for supporting a lower end of the elongate member is generally horizontally disposed.

Emery describes that "[t]he panels 7 and 8, the retaining bars 30 and 31, and the upper supporting panel 5, are so constituted and arranged relative to each other that fishing rods ...

may be mounted ... with the butt ends... thereof resting on the outer faces of the panels 7 and 8..." In contrast to Applicant's claims, however, Emery requires that "the retaining bar 30 or 31 is effective to wedge or clamp the fishing rod into abutting engagement with the outer face of the panel 7 or 8." Emery, col. 3, lines 46-53 and 69-71 (emphasis added). Specifically, to achieve such abutting engagement, Emery requires that "the panels 7 and 8 [are]... disposed at downwardly and outwardly sloping acute angles to the vertical." Emery, col. 2, lines 30-34 and Figures 1, 3 (emphasis added).

Thus, Emery essentially describes a stand having a leaning bar with an additional structure for securing the butt end of an elongate member. Emery, however, does not describe "generally horizontally disposed means for supporting a lower end of the elongate member when received between the rails," as claimed in independent claims 1 and 16, as amended. Moreover, Emery actually teaches one of ordinary skill in the art away from supporting lower ends of the elongate members by a generally horizontally disposed means, because the principle of operation of Emery's fishing rod stand requires his panels to be disposed at sloping acute angles to wedge the rods.

Specifically, Emery relies on the acute angle wedge to provide both horizontal and vertical forces to the butt end, both of which are required for Emery's stand to work. This is fundamentally different from Applicant's claimed invention, wherein the support provides only a vertical or stopping force for the lower end of the elongate member. The horizontal force is provided by the tool weight reacting against the rails. While some structure may be desirable to stop, index, locate, or constrain the downward vertical movement of the tool when inserted, the function of this structure is distinct from the supporting function of the rails. According to Applicant's invention, primary support of the elongate member is accomplished by the rail design and offset configuration.

Accordingly, Applicant respectfully submits that, at least for the foregoing reasons, Emery fails to be a proper anticipatory reference and thus independent amended claims 1 and 16, and claims 2-7 and 16-23, that depend therefrom, are patentable. Reconsideration and withdrawal of the rejection of claims 1-7 and 16-20 are respectfully requested.

Prior Art Not Relied-Upon

The Office Action further states, on page 4, that “[t]he prior art made of record and not relied upon is considered pertinent to applicant's disclosure.” Applicant respectfully submits that none of the U.S. Patents of record, alone or in proper combinations, describes or suggests each element of independent claims 1 and 16, as amended, or claims 2-7, and 17-20 that depend therefrom.

CONCLUSION

Applicant requests that the Examiner reconsider the application and claims in light of the foregoing Amendment and Response, and respectfully submits that all of claims 1-23 are in condition for allowance. If, in the Examiner's opinion, a telephonic interview would clarify issues and expedite the favorable prosecution of the present application, the undersigned attorney would welcome the opportunity to discuss any outstanding issues, and to work with the Examiner toward placing the application in condition for allowance.

Respectfully submitted,



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